

REMARKS

The following are Remarks in response to the third Office Action of 08-07-2008. All dates recorded are the Mail Room Date of the Image File Wrapper.

Please note the first Amendment submitted by the Applicant of 12-31-2007 is referred to as Amendment #1; the second Amendment of 06-02-2008 is referred to as Amendment #2; and the third Amendment presented herewith is referred to as Amendment #3.

Please note that the first Office Action of 08-01-07 is referred to as O.A. #1, the second Office Action of 04-04-2008 is referred to as O.A. #2, and the third office action of 08-07-2008 is referred to as O.A.#3.

The items in this Amendment #3 are numbered from **[201]** onward, to establish a distinct numbering system from the Applicant's Application (**[0001]** onward), Amendment #1 (**[001]** onward), and Amendment #2 (**[101]** onward).

MPEP 2141-IV requires the applicant to: "*distinctly and specifically point out the errors in the office's actions.*" The word "*incorrect*" should be read as equivalent to the words "*in error*" throughout this Amendment.

The words stating that the "*O.A. #3 is incorrect*" should be read as equivalent to the words that the "*Examiner is incorrect.*"

References to "*this invention*" should be read as referring to this claimed invention as claimed in Claims 24 to 29.

Bold text, underlining, and *italics* have been added to emphasize key points.

[201] AMENDMENTS TO THE SPECIFICATION. The Specifications are presented in clean form as PREVIOUSLY AMENDED without changes or amendments herein.

[202] AMENDMENTS TO THE CLAIMS. The active Claims are presented in clean form as PREVIOUSLY AMENDED without further changes or amendments herein:

- (1) Claims 1-23 have been CANCELED;
- (2) Claims 1-18 were PREVIOUSLY CANCELED;

- (3) Claims 19-23 are CANCELED herein to narrow the scope of the claimed invention and to more readily facilitate approval of the remaining claims;
- (4) Claims 24 -29 are presented in clean form as PREVIOUSLY AMENDED, with no amendments in this Amendment #3.

**THE FOLLOWING ARE GENERAL REMARKS CONCERNING THE
PATENTABILITY OF THIS INVENTION AND THE EXAMINATION PROCESS
TO DATE.**

[203] The Mission of the USPTO is to encourage inventions of the type of this invention. It states in part: *"The USPTO mission is to ensure that the intellectual property system contributes to a strong global economy, encourages investment in innovation, and fosters entrepreneurial spirit."*

[204] The Applicant's invention, presented in the Application of 04-118-2004 and Amended to date, has been a major investment in innovation in the spirit of this USPTO Mission. This invention is based on:

- (1) The Applicant's more than 30 years of expertise in the field;
- (2) The Applicant's more than 10,000 hour scientific research project prior to the Application date of this invention; and
- (3) The Applicant's many thousands of additional hours of scientific research, since the 2004 date of the Application for this invention, to further validate and confirm the underlying scientific structure of this invention.

[205] The Applicant's motivating force behind this extensive scientific research effort and this invention is to provide a major contribution to society.

This contribution to society is in the form of a vastly improved and updated version of the Myers Briggs Type Indicator (MBTI), used to date by over 40 million individuals in more than 17 countries, and is currently being used by more than two million individuals

per year.

The MBTI has remained virtually unchanged for more than 50 years, and a replacement is sorely needed that matches the requirements of society and commerce in the 21st Century.

[206] The Applicant's invention is a scientific principle with a scientific structure, and as such is not protected by copyright law alone.

To be afforded the Inventor's right to legal protection, and to justify the very substantial investment to date, and to be commercially viable, this invention as claimed requires the protection of a patent.

The USPTO "*Copyrights > Basics*" web page defines a copyright as: "*The copyright protects the form of expression rather than the subject matter. For example, the description of a machine could be copyrighted, but this would only prevent others from copying the description; it would not prevent others from writing a description of their own or from making or using the machine.*"

[207] If not protected by a patent, this invention will immediately become in the public domain due to its scientific nature as a "*scientific principle*", similar to the way the closest prior art, the Myers Briggs Type Indicator (MBTI), is in the public domain.

The MBTI is not protected by copyright due to its scientific nature, and multitudes of individuals have been able to benefit by their own "*expression*" of the ideas of Carl Jung, Isobel Myers, and Katherine Briggs. The MBTI is a patentable invention by today's standards, although it never was submitted for patenting, and the term of any patent would have expired by now.

The only protection enjoyed by the MBTI is its proprietary survey document. However, equivalent-but-different "*expressions*" of this survey document have been readily developed by others to easily overcome this copyright, such as the one by Keirsey & Bates in the book *Please Understand Me*.

[208] This information regarding Patenting vs. Copyright is presented to overcome the subjective comments by the Examiner(s) seeming to indicate general opposition to granting a patent of this type.

These comments by the Examiner(s), with the date of the telephone conversation with the Applicant in parenthesis, include: (Actual wording may have varied slightly, but with the same meaning as presented herewith.)

- (1) *"This should be copyrighted not patented."* (06-24-2008)
- (2) *"The design choice [of twelve functions] is similar to selecting the color or shape of a lever of a mechanical invention."* (06-24-2008)
- (3) *"What will we do if someone applies with thirteen functions?"* (07-24-2008)
- (4) *"Others have tried to patent this type of thing."* (07-24-2008)

[209] This invention has been purposely developed using common language and common cognitive function definitions to describe the highly scientific and novel nature of its structure and components. This has been done to make it user-friendly and familiar sounding for ease in use as a cognitive educational tool.

This should not be interpreted by the Examiner to indicate or infer that the invention, *"as a whole, and with all claim limitations,"* is obvious.

[210] The Applicant respectfully submits that the examination to date of this invention, as presented in the Claims herewith, has clearly established patentability under 35 U.S.C. 101 regarding patentable subject matter, 35 U.S.C. 102 regarding novelty, 35 USC 112 regarding this Claims being substantiated by the Application.

- (1) In the latest FINAL ACTION OF 08-07-2008, the sole basis of rejection in O.A. #3 is for *"Obviousness"* under 35 U.S.C. 103. This obviousness rejection relies solely on *"mere conclusory statements"* which are disallowed by MPEP 2141-III and on *"encompassing"* which is disallowed by MPEP 2144.08-II.
- (2) MPEP 2141-III states: *"The key to any rejection under 35 USC 103 is the clear articulation of the reason(s) why the claimed invention would be obvious. The Supreme Court in KSR noted that*

the analysis supporting a rejection should be made explicit..... [R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

- (3) MPEP 2144.08-II states: *"The section 103 requirement of unobviousness is no different in chemical cases than with other categories of patentable inventions..... The fact that a claimed species is encompassed by a prior art species or subgenus is not sufficient by itself to establish a Prima facie of obviousness....The fact that a claimed compound may be encompassed by the disclosed generic formula does not by itself render that compound obvious."*
- (4) The applicant respectfully submits that all the objections and rejections raised in OA #3 relate to individual components of the invention, to individual steps of the Claims of the invention, or to Dependent Claims, and do not consider the invention "as a whole," with "all the claim limitations," and "without prior hindsight."

[211] The Applicant respectfully requests reconsideration of the rejection of Claims 24 to 29 on the basis that these Claims now meet the requirements of 35 USC § 101, 102, 103, and 112.

Claims 24 to 29 were documented in Amendment #1, submitted with minor amendments in Amendment #2, and are submitted herewith in PREVIOUSLY AMENDED clean form.

[212] The Applicant respectfully requests that the Remarks recorded by the Applicant in Amendment #1 of 12-31-2007, Items [001] to [027], be considered part of this Amendment as if repeated herein.

The Applicant further requests that the Remarks recorded by the Applicant in Amendment #2 of 06-02-2008, Items [101] to [132], be considered part of this Amendment as if repeated herein.

[213] In the O.A.#3 Final Rejection of 08-07-2008, the Examiner requested that the Applicant "articulate why the Examiner's rationale is incorrect in cooperation with a showing of facts and evidence supporting the articulation." The Applicant herein provides this articulation together with "supporting facts and evidence"

validating each articulation.

[214] In the Telephone interview of 07-24-2008, the Examiner requested that it is the obligation of the Applicant to establish and prove the unobviousness of this invention as claimed.

The Applicant has provided a *“preponderance of evidence”* herein establishing unobviousness as required by MPEP 2142. However, the Examiner’s attention is directed to MPEP 716.01(a) that states: *“The lack of objective evidence of unobviousness does not weigh in favor of obviousness.”*

[215] The Applicant respectfully submits that O.A. #3 is incorrect in relying solely on *“mere conclusory statements”* in this obviousness rejection under 35 USC 103(a), including the *“mere conclusory”* rationale of *“Design Choice”* which the USPTO defines as a conclusion, not a statement of fact.

- (1) The USPTO web document identified below clearly disallows *“Design Choice”* as a rationale for rejection. This USPTO document, “FORMULATING AND COMMUNICATING REJECTIONS UNDER 35 U.S.C. 103,” states: *“A simple statement that a difference is a “design choice” or “lacks an advantage or unexpected result” is insufficient rationale to support a well written and legally sufficient rejection. These are conclusions, not statements of fact.”*

(<http://www.uspto.gov/web/menu/busmethp/busmeth103rej.htm#IIIC>)

- (2) No articulation, based on objective facts and evidence as required by MPEP 706.02(j), 716.01(d), MPEP 2141-III, and MPEP 2143.01-IV, is provided by the Examiner as to how *“one of ordinary skill in the art”* would anticipate, from Wood and the other references cited, all the details and limitations of the Claims of this invention, taken as a whole.
- (3) MPEP 706.02(j) states: *“To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” Ex parte Clapp, 227 USPQ 972, 973*

- (4) MPEP 716.01(d) states: *"Facts established by rebuttal evidence must be evaluated along with the facts on which a conclusion of a prima facie case [of obviousness] was reached, not against the conclusion itself." "[E]ach piece of rebuttal evidence should not be evaluated for its ability to knock down the prima facie case. All of the competent rebuttal evidence taken as a whole should be weighed against the evidence supporting the prima facie case." This MPEP further adds that the Examiner must "establish such a strong case of obviousness that the objective evidence of nonobviousness is not sufficient to outweigh the evidence of obviousness."*
- (5) MPEP 2141-III states: *"The key to any rejection under 35 USC 103 is the clear articulation of the reason(s) why the claimed invention would be obvious. The Supreme Court in KSR noted that the analysis supporting a rejection should be made explicit. [R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."*
- (6) MPEP 2143.01-IV states: *"Mere statement that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish a Prima facie case of obviousness...... A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill in the art at the time the claimed invention was made' because the references relied upon teach all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references."*
- (7) MPEP 2144.03-E states: *"It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based."*

[216] The Applicant respectfully submits that O.A. #3 is incorrect in issuing this Final Rejection without providing a detailed response to the 10,000 words and 32 pages of Remarks, items [101] to [132], in the Applicant's previous Amendment #2 in response to O.A. #2.

These prior Applicant Remarks of O.A. #2 explicitly articulated the facts, evidence, and argument supporting approval of this invention, and were disregarded in issuing this Final Rejection with the *"mere conclusory statement"* that the Applicant's Claims *"could have been finally rejected on the grounds and art of record in the next Office Action if they had been entered earlier."*

MPEP 2144.08-II states: *"The fact that a claimed species is encompassed by a prior art species or subgenus is not sufficient by itself to establish a Prima facie of obviousness."*

Re *Piasecki*, 745 F.2d at 1473, 223 USPQ at 778, *"If evidence is deemed insufficient to rebut the prima facie case of obviousness, Office personnel should specifically set forth the facts and reasoning that justify this conclusion."*

**THE FOLLOWING IS A DETAILED RESPONSE TO EACH OF THE ITEMS IN
O.A. #3, FINAL REJECTION, OF 08-07-2008.**

[217] O.A. #3, Item 1. Regarding the Declaration of 12-31-2007, the Applicant respectfully submits that O.A. #3 is incorrect in stating that: *"The facts presented are not germane to the issue."*

- (1) This Declaration provided a direct comparison of elements of the Myers Briggs Type Indicator, the closest prior art, with specific elements described in the Applicant's Claim 24, showing precise and novel differences to the closest prior art that are explicitly germane to this invention.

MPEP 716.02(e) states: *"An affidavit or declaration under 37 CFR 1.123 must compare the claimed subject matter with closest prior art to be effective to rebut a prima facie case of obviousness."*

MPEP 716.01(a) states: *"Examiners must consider comparative data."*

- (2) O.A.#3 is incorrect is stating that *"Wood at least clearly teaches an invention that is compatible to a number of personality sorters"* as a basis of obviousness.

This reference to *"a number of personality sorters"* clearly defines that Wood *"teaches away"* from this invention, and fails to consider all the specific and novel elements of the Applicant's invention *"as claimed and with all the claim limitations."*

- (3) The Applicant respectfully submits that O.A. #3 is incorrect in not articulating how the Applicant's facts, evidence, and arguments presented in Amendment #2, Item [108] were insufficient to overcome this objection of this exactly identical Item 1 in O.A. #2. O.A. #3 merely repeated the same wording without comment.

- (4) The Examiner is directed to this Item [108] of Amendment #2 regarding this Declaration, and to consider the facts, evidence, and arguments therein as if they are repeated herewith.

[218] O.A. #3, Items 2 through 9. The Applicant respectfully submits that the O.A. #3 is incorrect in using “mere conclusory statements” of obviousness, and failing to articulate how the Applicant’s facts, evidence, and arguments presented on these exact items in 32 pages of over 10,000 words of Amendment #2, were insufficient to overcome this obviousness objection.

O.A. #3, Items 2 through 9, repeat virtually the identical wording of Items 7 through 13 of the U.S.C. 103(a) Obviousness objection in the previous O.A. #2. The only two text revisions in these seven items from O.A. #2 to O.A. #3 were: (1) the deletion of the word “broadly” in the phrase “Wood broadly teaches” in the first sentence of Item 5, and (2) the addition of the words “advising one or more individuals” before the phrase “in appropriately using the cognitive functions” into the first sentence of Item 9. It is the conclusion of the Applicant that these revisions do not change the gist or meaning of these sentences requiring further comment.

The Examiner is directed to Items 7 through 13 of Amendment #2, and to consider the facts, evidence, and arguments therein as if they are repeated herewith.

[219] O.A. #3, Items 2 through 9 (Cont’d). The Applicant respectfully submits that O.A. #3 is incorrect in matching vague and inexact references scattered throughout the 38 pages of the Wood application with individual components of this invention, only possible with knowledge of this invention, to reject the precise, novel, and complex claims of this invention which must be considered “as a whole, with all the claim limitations.”

- (1) O.A. #3 is incorrect in seeming to try to establish obviousness of this claimed invention based on considering it merely as cognitive survey process made obvious by the Wood reference, without taking into account the precise and novel

components of Claims 24 and 27, taken “as a whole and with all claim limitations.”

- (2) “The claimed invention may not be dissected into discrete elements to be analyzed in isolation, but must be considered as a whole.” See, e.g., *W.L. Gore & Associates, Inc. v. Garlock, Inc.*
- (3) “Finding” vague and inexact references to approximately match individual items of the Claims of this invention “encompassed” throughout the 38 pages of the Wood Application is the sole specific rationale provided by O.A. #3, which is disallowed by MPEP 2144.08-II.
- (4) MPEP 2144.08-II states: “The section 103 requirement of unobviousness is no different in chemical cases than with other categories of patentable inventions....The fact that a claimed species is encompassed by a prior art species or subgenus is not sufficient by itself to establish a Prima facie of obviousness....The fact that a claimed compound may be encompassed by the disclosed generic formula does not by itself render that compound obvious.”
- (5) O.A. #3 fails to provide the required objective facts and evidence on how “one of ordinary skill in the art” would find obvious, and also would select, the exact items merely “encompassed” in Wood to duplicate the Claims of this invention, when the Claims are taken “as a whole and with all claim limitations.”

[220] O.A.#3, Items 2 and 3, are incorrect in merely quoting the basic wording of 35 USC 103(a), and the factual inquiries set forth in *Graham v. John Deer*, without considering the substantial and material clarifications of 35 USC 103(a) provided by the *KSR v. Teleflex* decision as interpreted in recent revisions of the MPEP.

The *KSR v. Teleflex* decision, interpreted by recent revisions to MPEP 2141 and other MPEP articles, requires the Examiner to clearly articulate objective facts and evidence of obviousness. It clearly disallows the “mere conclusory statements” of the “Design Choice” and “Encompassment” rationales, which form the sole basis of the obviousness findings in this O.A. #3.

[221] O.A.#3, Item 4. The Applicant respectfully requests the withdrawal of the rejection of Claims 24-29 under 35 U.S.C. 103(a) on the basis that the facts,

evidence, and argument provided previously and herein establishes the nonobviousness of this invention as claimed and with all the claim limitations.

[222] O.A. #3, Item 5(a). Re Claims 24 and 27, O.A.#2 is incorrect in picking twelve items of Wood, approximately matching the twelve cognitive functions of this invention as claimed, from the 83 similar items listed together in Wood, which is only possible with the inadmissible hindsight of prior knowledge of this invention.

- (1) The twelve items selected from Wood are mingled among 83 mere trait elements, many of which are vague, indefinite, and are certainly not cognitive functions. This referenced source of 83 items includes such unrelated items as *“poetical, psychic, romantic, loving, life of the party, people pleaser, pillars of the community, and social ranking.”*
- (2) Using scientifically based *“Factorial Equation”* calculations and analysis, there is less than one chance in many millions of selecting the specific set of twelve cognitive functions of this invention as claimed out of the 83 available items from Wood without prior knowledge of this invention.
- (3) Further, using *“Factorial Equation”* calculations and analysis, there is less than one chance in over 34,000 of selecting even one set of the pairs of functions of this invention as claimed from the 83 available items from Wood without prior knowledge of this invention.
- (4) Still further, using *“Factorial Equation”* calculations and analysis, there is less than one chance in many billions of selecting (1) the novel twelve cognitive functions, (2) together with the grouping into the two novel columns of six functions, and (3) with the novel six pairs of functions of this invention as claimed from the 83 available items from Wood without prior knowledge of this invention.
- (5) Wood “teaches away” from this invention in defining that that 83 elements are needed to achieve the same purpose as the twelve cognitive functions of this invention.

[223] O.A. #3, Item 5(a) (Cont'd). Re Claims 24 and 27, O.A. #3 is incorrect in picking twelve “trait” items of Wood as “equivalents” to the twelve cognitive functions of this invention. They are presented in Wood as mere traits listed among 83 similar traits, and are not presented as “cognitive functions” where only twelve functions cover the full spectrum of cognitive behaviors and actions.

- (1) MPEP 2144.06-II states: *“In order to rely on equivalence as a rationale supporting obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on the applicant’s disclosure or the mere fact that components are functional or mechanical equivalents.”*
- (2) O.A. #3 fails to meet the requirements of equivalency defined by MPEP 2183 which requires that: *“(A) the prior art element performs the identical function specified in the claim in substantially the same way, and produces substantially the same results as the corresponding element disclosed in the specification; (B) a person of ordinary skill in the art would have recognized the interchangeability of the element shown in the prior art for the corresponding element disclosed in the specification and (C) there are insubstantial differences between the prior art element and the corresponding element disclosed in the specification.”*

[224] O.A. #3, Item 5(b), is incorrect in picking vague wording from Wood regarding a “cognitive architecture system” of this invention that fails to “anticipate, suggest, or motivate” the details of the cognitive architecture system of the claims of this invention “as a whole with all claim limitations.”

[225] O.A. #3, Items 5(c) through (i). Re Claims 24 and 27, O.A. #3 is incorrect in matching approximately similar items from Wood to the “secondary steps” of Claims 24 and 27 of this invention.

- (1) Regarding secondary steps of claims, MPEP 2141.02 states, with reference to *In re Hirao*, that: *“due to the admitted unobviousness of the first two steps of a claimed combination of steps, the subject matter as a whole would not have been obvious to one of ordinary skill in the art at the time the invention was made.”*
- (2) Independent Claim 24 is composed of four method steps, (a), (b), (c), and (d), which the Applicant presents as novel and unobvious. These first four steps of this Claim establish the overall novel and unobvious nature of this invention as

presented in Claims 24 and 27, “as a whole,” “with all the claim limitations,” and “without hindsight bias.”

Step (a) of sample Claim 24 defines the novel structure of twelve cognitive functions. Step (b) defines the cognitive architecture system. Step (c) defines the novel groupings of the twelve cognitive functions into two column sets of functions sharing similar characteristics. Step (d) defines the novel groupings of the twelve cognitive functions into six pairs with polar opposite attributes.

- (3) Wood does not anticipate, suggest, or motivate the novel “*structure and function*” of the exact twelve cognitive functions of Step (a) of Claim 24, the cognitive architecture system of Step (b), the two column sets of Step (c), nor the six pairs of Step (d) of this Claim 24.
- (4) MPEP 2141.01(a)-II states: “[D]ifferences in structure and function of the inventions carry far greater weight.”
- (5) MPEP 2144.08-II-A(c) states: “In making an obviousness determination, Office personnel should consider the number of variables which must be selected or modified, and the nature and significance of the differences between the prior art and the claimed invention.”
- (6) The additional secondary method steps (c) through (i) of Claim 24 include some novel and as well as some conventional components such as surveys and reports to complete the overall system and method as a usable, tangible and concrete product. These additional steps (e) through (j) are made novel and unobvious by the requirement to consider “*the claims as a whole and with all claim limitations*” including the novel steps (a) through (d) of Claims 24 and other steps of Claim 27.
- (7) O.A. #3 is incorrect, per MPEP 2141.02, in concluding that finding approximately similar items in Wood that approximately match some secondary steps of this invention as claimed makes this invention obvious.
- (8) O.A. #3 is incorrect in interpreting the Applicant’s precise and novel “*cognitive development*” invention, with the explicit and novel steps therein, as merely a generic personality evaluation tool made obvious by the existence of other generic and unscientific personality evaluation tools such as the Wood reference.

[226] O.A.#3, Item 6. Re Claims 24 and 27, O.A. #3 is incorrect in concluding Wood anticipates “segmenting the twelve cognitive functions of the cognitive architecture system into two column sets.” This Item 6 starts with the words “Wood further broadly teaches,” and goes on to select items from Wood that, with prior knowledge of this invention, approximately match items of this invention. These items from Wood are inexact and incomplete compared to the precise components of this invention, and are “encompassed” among the many other items of Wood.

- (1) O.A. #3 is incorrect in not taking into account the precise selection of exactly six cognitive functions and the exact choice of the six cognitive functions of this invention in a “*left-brain-style*” column set, and in not taking into account the precise selection of exactly six cognitive functions and the exact choice of the six cognitive functions of this invention in a “*right-brain-style*” column set.
- (2) Using scientific “Factorial Equation” calculations, there is less than one chance in many millions of the selection, out of 83 available items from Wood and without prior knowledge of this invention, of the exact six cognitive functions of this invention in a left-brain-style column set, and the exact six cognitive functions of this invention in a right-brain-style column set.

[227] O.A #3, Item 7. Re Claims 24 & 27, O.A. #3 is incorrect in concluding Wood anticipates “defining the twelve cognitive functions matched in pairs.” This Item 7 starts with: “What Wood fails to teach is (b) defining the groups of left-brain and right-brain styles as matched in pairs.” It further states: “Applicant has not disclosed that having the functions matched in pairs solves any problem and is for any particular purpose.” It adds: “it would have been obvious to one of ordinary skill in the art....to have modified Wood.....”

- (1) The “*problem solved*” by the functions matched in pairs, and the “*novelty and unobviousness*” of the six pairs, is clearly described in the Specification and the Drawings of the Application.
- (2) This identically worded item in O.A #1 was responded to in Amendment #1, Item [020], paragraphs (1) through (6), on pages 36, 37, 38, and 39. This identically

worded item in O.A. #2 was further responded to in Amendment #2, Item [117], paragraphs (1) through (9), on pages 34, 35, and 36.

The Examiner, in O.A. #3, provided no rebuttal to these previously documented Remarks by the Applicant.

The Applicant respectfully suggests the Examiners review the Application and the above noted pages of the two Amendments to avoid the repetition of more than seven pages of text herein.

- (3) This objection is "merely conclusory" in nature, does not take into account the precise definition of six sets of pairs, and does not anticipate the exact two novel cognitive functions matched in each of the novel six pairs of this invention. The only way that this exact set of six pairs could be established from Wood is with prior knowledge of this invention.
- (4) Without this prior knowledge of this invention, using scientific "Factorial Equation" calculations, there is less than one chance in over 3400 of the selection of each of the pairs of this invention from the 83 available items from Wood. Anticipating and selecting all six pairs would be less than one chance in many millions.
- (5) The major significance of the exact matching of the twelve cognitive functions into six pairs is described in the Application, Item [0072], which states *"Each function in a pair has a complementary but polar opposite attribute similar to east and west on the compass. The effectiveness of each function in a pair is increased by the way the two functions in the pair work together in a complementary and polar-opposite way, such as one hand to hold a piece of paper and the other to write a name, or first stepping on one foot and then the other to walk."*
- (6) Item [0149] of the Application adds, *"It is most appropriate to use the slower left-brain style function in each pair first, to prepare for the most appropriate use of the right-brain style function next."* Items [0148] through [0151] of the Specification provide additional details of the "*problems solved*" and the "*purpose*" of this pairing of the twelve cognitive functions into six precise sets.

[228] O.A.#3, Item 8. Regarding Dependent Claims 26 and 29, with six of the cognitive functions with the highest magnitudes of preference referred to as strengths and six as weaknesses, O.A. #3 is incorrect in not taking into account that a Dependent Claim gains novelty by dependence on a novel independent claim in accordance with MPEP 2143.03.

- (1) The cited Claims 26 and 29 in the Applicant's claimed invention are merely Dependent Claims in producing a useful, tangible and concrete product. They are made novel by the preceding novel Independent Claims in accordance with MPEP 2143.03 which states: "If an independent claim is nonobvious under 35 U.S.C. 103, then any dependent claim is nonobvious."
- (2) O.A. #3 is incorrect in stating that "Wood teaches" the precise six functions of this invention as strengths and six items as weaknesses. Wood fails to define the exact six cognitive functions of this invention as strengths and the exact six cognitive functions of this invention as weaknesses.
- (3) Wood refers to any number of "personality sorters" as being grouped into strengths and weaknesses, but does not anticipate, motivate or suggest the exact twelve cognitive functions of this invention in the exact pairs of this invention.
- (4) This Item 8 has the exact wording of O.A.#2, Item 12. The Examiner is directed to the Applicant's response in Amendment #2 Item [118] as if repeated herewith, as this Item [118] did not receive a response in O.A. #3.

[229] O.A.#3, Item 9. Regarding Dependent Claims 25 and 28, about advising individuals about "appropriately" using the cognitive functions matched in pairs, O.A. #3 is incorrect in not taking into account that a Dependent Claim gains novelty by dependence on a novel independent claim in accordance with MPEP 2143.03

- (1) The cited Claims 26 and 29 in the Applicant's claimed invention are merely Dependent Claims in producing a useful, tangible and concrete product. They are made novel by the preceding novel Independent Claims in accordance with

MPEP 2143.03 which states: "If an independent claim is nonobvious under 35 U.S.C. 103, then any dependent claim is nonobvious."

- (2) O.A. #3 is incorrect in stating that "Wood teaches" precisely the appropriate use of the novel six pairs of cognitive functions of this claimed invention.
- (3) This Item 9 has the exact wording of O.A.#2, Item 13 with the mere addition of the words "advising one or more individuals" to the first sentence. The Examiner is directed to the Applicant's response in Amendment #2 Item [119] as if repeated herewith, as this Item [119] did not receive a response in O.A. #3.

[230] O.A.#3, Item 10, stated that the: "Applicant's arguments filed 6/2/2008 have been considered but they are not persuasive."

O.A. #3 is incorrect in relying on this **"mere conclusory statement,"** disallowed by MPEP2141-III, to dismiss the 32 pages of facts, evidence and argument presented in the Applicant's Amendment #2 of 06-02-2008 without adequate rebuttal.

[231] O.A. #3, Item 11, stated that: "[T]he rationale of design choice of the particular twelve of the functions of Wood, and assigning particular names and groupings was sufficiently expressed in the [previous] office action."

The Applicant respectfully submits that O.A. #3 is incorrect in using this **"mere conclusory statement"** unsupported by articulation in this O.A. #3 or in the previous O.A. #2.

- (1) The USPTO web document identified below clearly disallows "Design Choice" as a rationale for rejection. This USPTO document, "FORMULATING AND COMMUNICATING REJECTIONS UNDER 35 U.S.C. 103," states: **"A simple statement that a difference is a "design choice" or "lacks an advantage or unexpected result" is insufficient rationale to support a well written and legally sufficient rejection. These are conclusions, not statements of fact."**

(<http://www.uspto.gov/web/menu/busmethp/busmeth103rej.htm#IIIC>)

- (2) The previous Office Action, referred to as O.A. #2, is incorrect in failing to include the words "Design Choice," either directly or by inference.

- (3) Item 11 of this O.A. #2 mentioned “*mere design consideration*” solely with reference to establishing six pairs of the twelve cognitive functions, which is only one element of many in the Claims. The words “*design choice*,” and any articulation of an objection based on design choice, did not appear in this O.A. #2.
- (4) The O.A. #3 is incorrect in failing to articulate with facts and evidence how “*one of ordinary skill in the art*” would select the twelve items as claimed from Wood from among the 83 similar items of Wood, with all the claim limitations, and without prior knowledge of this invention.
- (5) O.A. #3 is incorrect in failing to articulate how one of ordinary skill in the art would select the “groupings” of the exact two columns of cognitive functions and exact six pairs of cognitive functions of this invention as claimed, and with all the claim limitations, without prior knowledge of this invention.
- (6) O.A. #3 is incorrect in failing to explain how the facts and evidence cited from Wood and the other references establish a “*rationale*” supporting this “*mere conclusory statement*,” in accordance with MPEP 2144-I which states: “*examiner must present convincing line of reasoning supporting rejection*” [with] “*reliance on logic and sound scientific reasoning.*”

[232] O.A. #3, Item 11 (Cont'd). The Applicant respectfully submits that O.A. #3 is incorrect in citing “*Design Choice*” as a basis for rejection, as it is inapplicable to an invention of this scientific nature, structure, and complexity.

- (1) MPEP 2144.04 explicitly defines “*Design Choice*” with the statement that: “*The court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from prior art.*”
- (2) O.A. #3 is incorrect in raising “*Design Choice*,” presumably under MPEP 2144.04 and 2144.07, as a basis for rejection. This “*mere conclusory*” rationale, disallowed by MPEP 2141-III, is inappropriate for an invention of this detail, structure, and complexity where each component has an explicit scientific function and the structure “*as a whole*” is precise and novel.

This “*Design Choice*” basis of objection, as defined by MPEP 2144, is applicable to shape, colors, and styling features of an invention that have no functional significance, and that can be interchanged without changing the overall structure and integrity of the invention.

- (3) Each component of the Applicant’s invention as claimed has a non-interchangeable scientific function, was determined by extensive research and experimentation, and has a novel structure precisely defining the interrelationships of the components, all requiring examination “*as a whole with all the claim limitations.*”
- (4) MPEP 2144.08-II-A-4(c) states that: “*In making an obviousness determination, Office personnel should consider the number of variables which must be selected or modified, and the nature of the differences between the prior art and the claimed invention.*” It adds: “*Similarly, consider any teaching or suggestion in the reference that is significantly different in structure.*”
- (5) The Applicant respectfully submits that O.A. #3 is incorrect in citing “*Design Choice*” as the rationale for a Final Rejection. This “*Design Choice*” objection is a “*mere conclusory statement*” disallowed by MPEP 2141-III as cited above, and is not a true “rationale.” It is unsupported by the required facts, evidence, and argument required to articulate a “rationale” in accordance with the guidelines of many articles of the MPEP.
- (6) The Examiner, in the telephone conversation of 06-25-2008, described this “*Design Choice*” rationale to the Applicant as “*equivalent to changing the color or shape of a lever of a mechanical invention,*” (or very equivalent words) specifically referring the Applicant to MPEP 2144.04 and 2144.07. This further establishes the “*Design Choice*” rationale as applying merely to a feature of an invention not having a specific function or scientific purpose. It applies solely to “*choices*” where an item can be changed without changing the function or structure of a component or of the complete invention.
- (7) In accordance with the exact wording requirements of MPEP 2144.03-C, the Applicant hereby “*demand*s” that the Examiner produce authority for his/her statement of how the rationale of “*Design Choice*” makes this invention obvious,

and requests that the Examiner support this finding with adequate facts and evidence.

[233] O.A.#3, Item 11 (Cont'd). O.A. #3 further stated that: “[I]n order to overcome a finding of obviousness over the prior art, the Applicant must articulate why Examiner’s rationale is incorrect in cooperation with a showing of facts or evidence supporting the articulation.”

The Applicant has explicitly articulated throughout this Amendment the facts, evidence and arguments of why O.A. #3 is incorrect in drawing a conclusion of obviousness by relying solely on “*encompassing*” and “*mere conclusory statements*” without facts, evidence and explanatory rationale supporting this obviousness conclusion.

- (1) The Applicant respectfully submits that this O.A. #3 does not provide a “*preponderance of evidence*” supporting a conclusion of obviousness.
- (2) MPEP 2142 states: “*The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The legal standard of “a preponderance of evidence” requires the evidence to be more convincing than the evidence which is offered in opposition to it.*”

[234] O.A.#3, Item 11 (Cont'd). O.A. #3 further stated that: “Applicant’s experimentation was well within the realm of reasonable experimentation.”

The Applicant respectfully submits that this is a “*mere conclusory statement*,” unsupported by the articulation of the required facts, evidence, and argument supporting such a conclusion of obviousness.

- (1) O.A. #3 is incorrect in failing to explain how the facts and evidence cited from Wood and the other references establish a “*rationale*” supporting this mere conclusory statement.

The Applicant respectfully submits explicitly establishing the facts and evidence of this research and experimentation in the previous Declaration of 12-

31-2007 together with the current Declaration #2 enclosed herewith. In addition, extensive details of the extensive nature of the research, experimentation, and validation of this invention are included throughout this Amendment.

This research and experimentation was an extensive ten-year project by the Applicant with the status of being an “expert” in the field.

- (2) The Applicant’s research is entitled to fair evidentiary weight. MPEP 716.05 states: *“the five or six years of research that preceded the claimed invention....is entitled to fair evidentiary weight.”*

[235] O.A.#3, Item 11 (Cont’d). O.A. #3 further stated that: “[A] person of ordinary skill in the art at the time would easily be able to select a set of cognitive functions that he felt would cover the spectrum of personality variations, in light of the prior art (e.g. Wood, MBTI, Carl Jung, etc.)”

The Applicant respectfully submits that this is a **“mere conclusory statement”** unsupported by the required articulation of the facts, evidence, and argument supporting such a conclusion. This objection is based solely on prior knowledge of the invention, and selects the twelve items out of 83 similar items **“encompassed”** in Wood to match the twelve cognitive functions of this invention.

- (1) O.A. #3 is incorrect in failing to articulate *“concrete evidence”* of how one of *“ordinary skill in the art”* would select the exact set of twelve cognitive functions of this invention without prior knowledge of this invention as required by MPEP 2143-A and MPEP 2143.01.
- (2) MPEP 2143-A states that it is: *“important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed invention does.”* *“The Board cannot simply reach conclusions based on its own understanding or experience—or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.”* *“As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on evidence in the record lacks substantial evidentiary support.”*

- (3) MPEP 2143.01 states: *"Mere statement that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish a prima facie case of obviousness."*
- (4) O.A. #3 is incorrect in merely finding twelve items "encompassed" in the 38 pages of the Wood Application that approximately match the twelve cognitive functions of this invention as claimed and using this as a basis for concluding obviousness.
- (5) "Encompassing" is disallowed as evidence of obviousness by MPEP 2144.08-II which states: *"The section 103 requirement of unobviousness is no different in chemical cases than with other categories of patentable inventions.....The fact that a claimed species is encompassed by a prior art species or subgenus is not sufficient by itself to establish a Prima facie of obviousness.....The fact that a claimed compound may be encompassed by the disclosed generic formula does not by itself render that compound obvious."*
- (6) In the above conclusory statement from Item 11, O.A. #3 explicitly articulates the need for prior knowledge of the novel principle of this invention with the words "cover the spectrum of personality variations," These words refer precisely to the words of the Applicant's Specification, and knowledge of this invention is needed to make the approximate selection of the twelve items from Wood. Wood does not make reference to, or make obvious, this novel principle of a set of cognitive functions that "cover the spectrum of personality variations."
- (7) The words "personality variations" in O.A. #3, Item 11, incorrectly compare this vague term of "personality variations" with the precisely defined "cognitive functions" of this invention.
- (8) In the above conclusory statement, O.A. #3 is incorrect in basing obviousness on the statement that others "would easily be able to select 'a' set of cognitive functions." The word "a" in this sentence infers the selection of a number of possible sets of cognitive functions rather than "the" exact set of this invention. This clearly acknowledges that others would not easily be able to select "the" set that exactly matches the novel twelve cognitive functions of this invention.
- (9) The references cited from Wood teach away from this invention as claimed in referring to a broad and very general interpretation of a "cognitive architecture

system,” referencing words from Wood such as “depends on which group of characteristics are chosen,” “allowing for a large number of combinations of characteristics,” and “allows for many different personality definitions and measuring schemes.”

- (10) O.A. #3 is incorrect in not providing an explanation of how the facts of Wood support an obviousness rejection. MPEP 2141-II states: “Once the findings of fact are articulated, office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C 103.”
- (11) MPEP 2143.01-IV states: “Mere statement that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish a Prima facie case of obviousness.....A statement that modifications of the prior art to meet the claimed invention would have been ‘well within the ordinary skill in the art at the time the claimed invention was made’ because the references relied upon teach all aspects of the claimed invention were individually known in the art, is not sufficient to establish a prima facie case of obviousness.”
- (12) As mentioned earlier, the “finding” of the twelve matching items from Wood “encompassed” within 83 similarly present items in Wood, is deemed invalid evidence of obviousness in accordance with MPEP 2144.08-II.

THE FOLLOWING ITEMS ARTICULATE EXPLICIT FACTS AND EVIDENCE OF APPLICANT’S “EXPERT” STATUS IN THE SCIENCE OF RESEARCH AND THE FIELD OF COGNITIVE DEVELOPMENT.

[236] The Applicant explicitly established his status as an “expert” researcher in four different fields before initiating this ten-year research project on cognition.

- (1) In the 1950s and 1060s, the Applicant extensively researched the field of sailing yacht racing and gained “expert” recognition in this field without ever receiving professional yacht racing instruction. Sailing yacht racing is a cognitive ability rather than physical sport.

- (a) The Applicant came within one position in the final race of a seven race series of being selected to participate in the 1960 Olympics in Italy, finishing second in this Olympic class selection series.
 - (b) Over the years, the Applicant received more than 30 trophies for his yacht racing success in local, regional, and international competitions in fleets of up to 50 sailboats and in more than six different models of sailboat.
- (2) The Applicant extensively researched the field of sailing yacht design in the 1960s to 1980s and gained "expert" recognition in this field without ever receiving professional sailing yacht design instruction or employing professional sailboat designers.
- (a) The Applicant designed 13 different models of production cruising sailboats, each a commercial success with substantial production runs, and with over 400 units of some models produced.
 - (b) More than 1600 sailing yachts have been built to the Applicant's designs.
 - (c) Applicant's 28ft Sabre sailboat design was inducted into the American Sailboat Hall of Fame in 2003, more than 30 years after its initial design and after the production of more than 580 boats to this design.
 - (d) The Applicant's 26ft Sabre sailboat design was selected as the one-design class for the North American Men's Sailing Championship for the Mallory Cup in 1967.
 - (e) The Applicant's 34ft Sabre sailboat design was selected as the "Boat of the Year" in its class by *Sailing World* magazine in 1987.
- (3) The Applicant extensively researched the field of motoryacht design in the 1960s to 1990s and gained "expert" recognition in this field without ever receiving professional motoryacht design instruction or employing professional motoryacht designers.
- (a) His initial 36ft motoryacht design received international acclaim and sales.
 - (b) Over 600 motoryachts up to 52ft in length have now been built by the company the Applicant founded, all based on the motoryacht design features and principles developed by the Applicant.

- (4) The Applicant extensively researched the field of sailing yacht construction in the 1960s and 1970s and gained "expert" recognition in this field without receiving professional yacht construction instruction or employing professional yacht builders.
 - (a) The yachtbuilding company he founded, Sabre Yachts, built and sold over 1600 ocean cruising yachts to 42 ft in length during his ownership.
 - (b) 15 years after the Applicant retired, the company he founded has continued to prosper and has now built over 2500 ocean cruising yachts.

[237] The Applicant's research and experimentation detailed in the Application, and detailed in the Declaration #2 provided herewith and in the previous Declaration, is the work of an "expert" in the field of cognitive development, not merely equivalent to the work of "a person of ordinary skill in the art" as stated in O.A. #3.

- (1) This information is presented in accordance with MPEP 2144.08-II-A-3 which states: *"[E]vidence must be viewed from one of ordinary skill in the art, not an expert."* This MPEP adds: *"However, any additional evidence [regarding expert status] presented by the applicant should be evaluated."*
- (2) This expert status of the Applicant is detailed in Declaration #1 of 12-27-2007, and in Declaration #2 submitted herewith. The Applicant's 30 years of public recognition of his expert status is explicitly detailed in the Declarations. This includes many examples of the Applicant being selected for leadership positions over many of other potential candidates by board members and selection committees of widely recognized organizations.
- (3) The 10,000 hours and ten years of dedicated research by the Applicant was preceded by more than 40 years of experience.
- (4) His leadership career began in 1956 with complete responsibility for supervising more than 50 employees plus all sub-contractors in the construction of a six storey hotel building, directed by head office personnel 80 miles away who visited weekly.

- (5) The Applicant's status as an expert was first publicly recognized and established by his selection as **President of the Executive Development Institute** in 1970, an organization educating approximately 400 executives each year in 31 multi-day courses and 8 daylong seminars. The chairman of this organization was the President of **The Bell Telephone Company of Canada**, one of the largest organizations in Canada.
- (6) A few highlights of the Applicant's status as an "*expert*" in the leadership and cognitive development field were his selection, over very many other eligible candidates, as:
 - (a) **Small Business Person of the Year** in 1985 for both the state of Maine and the six-state New England region;
 - (b) **Chairman of the Maine Delegation to the White House Conference on Small Business** in 1986;
 - (c) **Entrepreneur of the Year** by the **Maine Society of Entrepreneurs** in 1987;
 - (d) the recipient of the **1987 Innovation Award** by the **Smaller Business Association of New England**;
 - (e) a six-year member of the **Federal Reserve Bank of Boston's Business Advisory Council** from 1987 to 1994;
 - (f) **Chairman of the National Sailing Industry Association** in 1990.

[238] The ten year, 10,000 hour, research and experimentation project leading up to this invention was a thorough and comprehensive undertaking of an expert in the field, not merely "*well within the realm of reasonable experimentation*" as stated in O.A. #3.

This research project of the Applicant is detailed in Declaration #1 of 12-27-2007, and in Declaration #2 submitted herewith, is summarized as follows:

- (1) The experience gained in hiring and supervising over 800 employees in his wholly owned companies.
- (2) The Applicant's activity since 1994 has been developing the Cognitive Architecture System of Twelve Cognitive Functions covered by this patent

application, requiring over 10,000 hours of research and development time over the ten year period from 1994 to 2004, and entailing extensive trial-and-error experimentation to find the ideal structure of this invention.

- (3) The experience gained in interacting with many hundreds of corporate CEO clients in building many industrial and commercial buildings and in designing, building, and selling over 1600 luxury offshore cruising yachts up to 42 ft in length.
- (4) Prior to starting research on this invention, the Applicant attended a multitude of executive development programs and seminars, including those of the *Executive Development Institute*, the *Smaller Business Association of New England*, and *Dartmouth College*.
- (5) Since starting the more than 10,000-hour research project on this invention in 1994, the Applicant attended many major seminars for the sole purpose of researching this invention, and at his own personal expense. This included travel to, and attendance at, eight major multi-day executive development seminars by:
 - (a) *The Center for Psychological Type (CAPT)* in Chicago IL, Worchester MA, and Atlanta GA;
 - (b) *Harvard University* in Cambridge MA;
 - (c) *Northwestern University* in Evanston IL;
 - (d) *The American Management Association* in Hartford CT;
 - (e) *Information Mapping* in Boston MA; and
 - (f) *Babson College* in Wellesley MA.

In addition, the Applicant has attended a multitude of lesser seminars related to the subject matter of this invention and its documentation.

- (6) The Applicant substantially read, researched, and highlighted over 350 books on leadership, management, psychology, and neuroscience, all of which are sorted by category and cataloged with library style reference labels in the applicant's office.
- (7) This research effort included reading, studying, and highlighting relevant passages of many hundreds of business journals and business magazines, such

as the Harvard Business Review, MIT Sloan Management Review, Fortune, and Business Week. All of these are currently filed in the Applicants personal business library

- (8) A total of 1178 reference entries were made on an Excel spreadsheet through 2004, cataloging items solely related to this invention, from the Applicant's non-fiction library of books and relevant management journal articles.

[239] The four-year additional validation project, underway since the filing of the Application for this invention, has provided additional validation of the novel principle of this invention. This novel principle is defined in the Specification, Item [0063](d), as: *"Identifying that the readily observable and distinct cognitive traits of all behaviors and actions of individuals can be attributed to one of the twelve cognitive functions, can be a subset of a specific function, or can be attributed to a combination of functions."*

This ongoing validation effort is detailed in the Declaration #2 of this date, and is summarized as follows:

- (1) Validating the underlying principle of this invention was an ongoing process all through the ten-year evolution of this invention. This validation involved a constantly repeated cycle of "research-experiment-modify-test-retest" refinement of the invention to assure the validity of each element of this invention.
- (2) Since the Application filing date of this invention in 2004, the Applicant has invested thousands of additional hours into the further validation and documentation of the underlying principle of this invention.
- (3) Since this 2004 filing date, the Applicant has personally cataloged over 250 new pages of notes, with over 4000 additional new individual research reference items, all directly related to the validation and documentation of this invention.

Each book reference is cataloged by topic, author, copyright date, and page number, and each journal reference item is cataloged by topic, publication name, date, and page number.

This includes references on each of the twelve cognitive functions and their

interaction in column sets and pairs. It includes many hundreds of explicit examples of the: (1) correct use of each of the cognitive functions; (2) the misuse through the inappropriately excessive use of each of the cognitive functions; and (3) the misuse through the deficiency in using each of the cognitive functions.

- (4) Since this 2004 filing date of this invention, the Applicant has substantially read, researched, and highlighted over 65 additional books, in addition to the more than 350 previously researched, on the topics of leadership, management, psychology, and neuroscience. In addition, the regular research review of journals such as the Harvard Business Review has relentlessly continued.
- (5) The Applicant's library has expanded substantially since 2004, and now totals non-fiction 983 books and many hundreds of business journals and magazines, all related to management topics and the subject matter of this invention.
- (6) This further validation process has included the thorough investigating numerous other personality evaluation processes and psychological tests to ascertain that: (1) they do not satisfy the underlying scientific principle of this invention; (2) they do not make this invention obvious as this would invalidate a patent on this invention; and (3) further validating that this invention as claimed does satisfy its underlying scientific principle.
- (7) Since the initial discovery of this invention, this continuous research and validation process has been in the form of:
 - (a) interviewing a large number of prominent executives including business presidents, business owners, and management consultants;
 - (b) having a large number of these individuals complete a preference survey of the twelve cognitive functions similar to the one included in the Application for this invention;
 - (c) researching both biography books and articles on the executive activities of many prominent chief executives such as Jack Welch of GE, Sam Walton of Walmart, Ted Turner of CNN fame, and A. G. Lafley of Proctor & Gamble, to identify their correct use or misuse of each of the twelve cognitive functions in observable and documented actions and behaviors; and

- (d) further validation through my own experience in observing the actions and behaviors of well over a thousand individuals and executives through the years.
- (8) The Applicant respectfully submits that this ongoing validation process has explicitly validated the fundamental principles of this invention as defined in the Specification.

THE FOLLOWING ITEMS ARTICULATE EXPLICIT FACTS AND EVIDENCE OF THE NONOBVIOUSNESS OF THIS INVENTION.

[240] The Applicant discovered “*the source of the problem*” overcome by this invention in discovering and quantifying the deficiencies in the Myers Briggs Type Indicator (MBTI).

Through over 30 years of experience in executive supervision and development, and through over 15 years working with and studying the MBTI and other executive evaluation and development tools, the Applicant identified and solved the problem with an improvement on the MBTI suited to cognitive development efforts in the 21st Century as defined in the Application for this invention.

Others had not identified this problem. All references cited in O.A. #3, and all other references known by the Applicant, solve different problems in different ways. None target the problem of finding a direct and equivalent substitute and improvement on the MBTI with a small number of cognitive functions in the structure of the cognitive architecture system of this invention. This establishes material evidence of nonobviousness.

[241] This invention provides “*greater than expected results.*” The selection of the twelve cognitive functions in a cognitive architecture system with the groupings into two columns of functions with similar characteristics, and six pairs of cognitive functions with

polar opposite attributes, does *"more than yield a predictable result"* of an arbitrary selection of twelve cognitive functions in the usual *"psychological test"* survey format.

- (1) This *"greater than expected result"* of this invention is the complete cognitive architecture system of this invention that is the foundation for a novel cognitive development program to develop the cognitive abilities of individuals.
- (2) MPEP 716.02(a) states: *"A greater than expected result is an evidentiary factor pertinent to the legal conclusion of obviousness of the claims at issue."*

[242] This invention provides *"significant advantages"* over the Myers Briggs Type Indicator (MBTI), the closest prior art, that are novel, practical, and tangible. These advantages also apply to the cited Wood reference. The advantages are:

- (1) Establishing a cognitive architecture system, not provided by MBTI, of twelve cognitive functions covering the spectrum of cognition whereby the readily observable and distinct cognitive traits of all behaviors and actions of individuals can be attributed to one of the twelve cognitive functions, can be a subset of a specific function, or can be attributed to a combination of functions;
- (2) Establishing a structure that consists of twelve cognitive functions that are readily definable, observable, and quantifiable. The MBTI is composed of only four *"functions,"* plus four *"attitudes"* that are very ambiguous and multi-dimensional such as *"Extrovert"* and *"Introvert."* The cited Wood reference lists 83 mere trait elements, many of which are vague, indefinite. This Wood list of 83 items includes items such as *"poetical, psychic, romantic, loving, life of the party, people pleaser, pillars of the community, and social ranking"* that one would have difficulty defining as cognitive functions.
- (3) The cognitive functions, and other elements of this invention, are described defined in familiar, user-friendly terms, not the psychological language and definitions of the MBTI and Wood references.
- (4) The "left-brain-style" or "right-brain-style" categorizing of each of the twelve cognitive functions provided a tangible advantage in understanding the

characteristics of each of the functions. This advantage is missing in the MBTI and Wood.

- (5) The precise pairs of cognitive functions with polar opposite attributes, with each complementing the other, is a distinct advantage over the MBTI with its outdated “either-or” definition of opposites in a pair. MBTI clearly “teaches away” from this invention in this regard.
- (6) Using the cognitive architecture system of this invention as the foundation for a cognitive development program provides a distinct advantage over the MBTI and Wood references. (How would one instruct and train an individual in a business setting to develop skills in being a MBTI “extrovert” or “introvert?”

[243] The patent references cited in O.A. #3 solve different problems than this invention. The Wood, Buffington, Bouchard, etc. references are all unrelated to establishing an improvement on the MBTI in the manner of this invention with the purpose of facilitating the cognitive development of individuals. They all relate to different problems such as computer sorting of information from any number of survey instruments and tests, and pre-employment evaluation of individuals for specific work positions. None relate to, or anticipate, suggest or motivate, a cognitive development program with the precise details of this invention as claimed.

The cited references of MBTI and Carl Jung do not anticipate, suggest, or motivate the precise details or structure of the cognitive architecture of this invention as claimed and with all the claim limitations. This establishes material evidence of nonobviousness.

[244] The patent references of Wood, Bouchard, Buffington, and Cutter cited in O.A. #3 each teach away from this invention.

- (1) “Teaching Away” is a significant factor in establishing nonobviousness of an invention.
 - (a) MPEP 2144.05-III states: “A *prima facie* case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention.”

- (b) MPEP 2145-X-D-1 states: *"A prior art reference that 'teaches away' from the claimed invention is a significant factor to be considered determining obviousness."*
- (c) MPEP 2145-X-D-2 states: *"the totality of the prior art must be considered, and proceeding contrary to accepted wisdom in the art is evidence of nonobviousness."*
- (2) The Wood, Buffington, Bouchard (etc.) references cited all *"teach away"* from the precise selection of only twelve cognitive functions and from the cognitive architecture system of this invention as claimed.
- (3) Wood *"teaches away"* from the precise claims of this invention in defining that that 83 elements are needed to achieve the same purpose as the twelve cognitive functions of this invention.
- (4) Wood *"teaches away"* from the precise claims of this invention in teaching that a large number of different *"groupings of characteristics"* will serve its purpose. It uses very unspecific and broad words such as: *"depends on which group of characteristics are chosen," "allowing for a large number of combinations of characteristics,"* and *"allows for many different personality definitions and measuring schemes."*
- (5) Wood *"teaches away"* from the precise claims of this invention with the claimed step of *"subjecting the individual to one or more personality tests."* This invention is a cognitive development tool, not a personality test.
- (6) Wood *"teaches away"* from the precise claims of this invention in surveying characteristics selected from a group consisting of *"personality traits, skills, competencies, attitudes beliefs, behaviors, psychographic, demographic, and resume items."* This overly broad focus is entirely different than the precise focus on the exact twelve cognitive functions of this invention.
- (7) Wood *"teaches away"* from the precise claims of this invention in focusing on *"behavioral response tests, and lifestyle and quality-of-life tests."*

[245] In the Interview of 07-24-2008, the Examiner requested that the Applicant identify the *"sparks of innovation"* that were intuitively part of the development of this invention. Each one of these intuitive sparks establishes the novel and

unobvious nature of this invention. Many go against conventional teachings that “teach away” from this invention. These intuitive “sparks” of the Applicant’s research provide factual evidence of the nonobviousness of this invention.

Each of these items was subsequently validated by the extensive research and experimental test-and-retest validation methodology of the Applicant, both in the ten years before the 2004 filing of this patent application and in the four year since.

- (1) An Applicant’s intuitive spark established the social significance and potential of a vastly improved and direct replacement for the MBTI, suitable as a foundation for a novel cognitive development program.
- (2) An Applicant’s intuitive spark established, after analytical research-experimentation-testing-retesting validation that each of the selected twelve cognitive functions was an essential and irreplaceable component of the cognitive architecture system of this invention:
 - (a) the twelve cognitive functions chosen covered the full spectrum of cognitive behaviors and actions as defined above and in the Specification;
 - (b) no less than twelve cognitive functions would satisfy this complete cognitive architecture system requirement, and that no more than twelve cognitive functions were needed to satisfy this requirement.
- (3) An Applicant’s intuitive spark established the novel “left-brain-style” and “right-brain-style” cognitive attributes as described in the Specification, with six of the twelve cognitive functions having “left-brain-style” attributes and six of the twelve cognitive functions having “right-brain-style” attributes.
- (4) An Applicant’s intuitive spark established that the “*Expressive*” function is truly a “*right-brain-style*” function, and not the well-established conventional wisdom “teaching away” from this invention that it is a function of the left hemisphere of the brain. The MBTI “*Extrovert*” is placed in the left column by Carl Jung, Myers-Briggs, and the Wood reference.

Also, it is well established in the medical field that speech originates in the left hemisphere of the brain. Some injuries to the left hemisphere of the brain specifically eliminate an individual’s ability to speak, while there is no evidence of

corresponding injuries to the right brain that eliminate speech. This further *"teaches away"* from the Applicant's placement of *"Expressive"* in the right -brain-style column.

This intuition included placing *"Listening"* in the left-brain-style column, not in the right column of the *"Introvert"* of MBTI that further *"teaches away"* from this invention.

- (5) An Applicant's intuitive spark established that the *"Cooperative"* function is truly a *"left-brain-style"* function, and not the well-established *"teaching away"* from this invention that it is a function of the right hemisphere of the brain. It is considered a component of the MBTI *"Feeling"* in the right column, as defined by Carl Jung, Myers-Briggs, and the Wood reference.

This intuition included placing *"Independence"* in the right-brain-style column, not in the left column of the *"Extrovert"* as taught by the conventional wisdom of MBTI and the others that further *"teaches away"* from this invention.

- (6) The Applicant's intuitive spark established that the *"Decisive"* function is truly a *"right-brain-style"* function, and not the well-established *"teaching away"* from this invention that it is a function of the left hemisphere of the brain. The MBTI *"Judgment"* is placed in the left column by Carl Jung, Myers-Briggs, and the Wood reference.

This intuition included placing *"Adaptable"* in the left-brain-style column, not in the right column of the *"Perceiving"* as taught by the conventional wisdom of MBTI and the others that further *"teaches away"* from this invention

- (7) The Applicant's intuitive spark established that the *"Extrovert"* and *"Introvert"* elements of the MBTI were not truly cognitive functions with a specific and identifiable cognitive function and purpose, but were a vaguely defined combination of many cognitive abilities that further *"teaches away"* from this invention.

These two elements of MBTI did not meet the requirements of this invention that each cognitive function have a unique, specific, and readily identifiable function in the process of cognition.

[246] The Applicant respectfully requests reconsideration of the new grounds for rejection in light of the arguments and information provided above. For all the above reasons, Applicant submits that the objections and rejections listed in O.A. #3 and earlier Office Actions have been overcome, the specification and the claims are now in proper form, and that the claims all define patentably over prior art. Therefore he submits that this application is now in condition for allowance, which action he respectfully solicits.

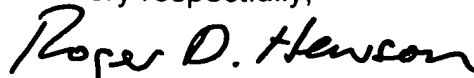
Should the Examiner find the arguments and information provided in this Amendment insufficient to overcome the objections and rejections raised in the Office Actions, the Applicant requests that the Examiner provide a detailed explanation, together with required supporting facts and evidence, as to why the Applicant's arguments and information have failed to overcome the objections and rejections.

Re Piasecki, 745 F.2d at 1473, 223 USPQ at 778, "Office personnel should not evaluate rebuttal evidence for its 'knock down' value against the prima facie caseor summarily dismiss as not compelling or sufficient. If evidence is deemed insufficient to rebut the prima facie case of obviousness, Office personnel should specifically set forth the facts and reasoning that justify this conclusion."

Request for Conditional Assistance

The Applicant PREVIOUSLY AMENDED the specification and the claims of this application so that they are proper, definite, and define novel structure that is also unobvious. If, for any reason this application as presented herein is not believed to be in full condition for allowance, Applicant respectfully requests constructive assistance and suggestions pursuant to M.P.E.P. 2173.02 and 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very respectfully,


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I hereby certify that this correspondence, and attachments, if any, will be deposited with the United States Postal Service by First Class Mail, in an envelope addressed to "Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450," on the date below.

Inventors Signature:  Date: October 31, 2008